

WN-16J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

American Energy Corporation
c/o
Registered Agent
1300 East Ninth Street
Cleveland, Ohio 44114

Re: Request for Information Pursuant to Section 308 of the Clean Water Act, 33 U.S.C.
§ 1318, Regarding American Energy Corporation – Century Mine Bennoc Refuse Disposal
Area, Alledonia, Ohio
Docket No.

To Whom It May Concern:

This letter concerns discharges of pollutants into waters of the United States associated with the American Energy Corporation – Century Mine, located in southeastern Ohio.

This letter and the enclosures are a request for information issued pursuant to Section 308(a) of the Clean Water Act (“CWA” or “the Act”), 33 U.S.C. § 1318(a). Section 308 of the Act authorizes EPA to require those subject to the Act to furnish information, conduct monitoring, submit monitoring data, and make reports as may be necessary to carry out the objectives of the Act. Enclosure 1, which is hereby made part of this letter, details the information American Energy Corporation (“AEC” or “you”) must provide to EPA. Please submit your written responses in accordance with the instructions in Section I of the Information Request, which provides response deadlines and the address where information should be submitted.

Pursuant to Section I, all information must be provided in the format requested within 10 days from the date this letter is received. Please provide a signed written confirmation of your intention to comply with this request, via fax or email attachment (pdf), to Janet Pellegrini, National Pollutant Discharge Elimination System Programs Branch, at the address provided in Enclosure 1, within 48 hours of receipt of this Information Request.

Your responses to this request must be accompanied by a certificate that is signed and dated by you or the person who is authorized by you to respond to the request. The certification must state that the response is complete and contains all information and documentation available to you pursuant to the request. Enclosure 2, which is hereby made part of this letter, provides a Statement of

Certification for this purpose.

Failure to respond fully and truthfully to this information request may result in enforcement proceedings under Section 309 of the Act, 33 U.S.C. § 1319, which could result in the judicial imposition of civil or criminal penalties or the administrative imposition of civil penalties. In addition, there is potential criminal liability for the falsification of any response to the requested information.

Although the information requested must be submitted to EPA, you are entitled to assert a business confidentiality claim pursuant to the regulations set forth in 40 C.F.R. Part 2, Subpart B. If EPA determines the information you have designated meets the criteria in 40 C.F.R. § 2.208, the information will be disclosed only to the extent and by means of the procedures specified in Subpart B. Unless a confidentiality claim is asserted at the time the requested information is submitted, EPA may make the information available to the public without further notice to you (see Enclosure 3).

Enclosed is a document entitled *U.S. EPA Small Business Resources-Information Sheet* to assist you in understanding the compliance assistance resources and tools available to you (see Enclosure 4). Any decision to seek compliance assistance at this time, however, does not relieve you of your obligation to EPA nor does it create any new rights or defenses, and will not affect any EPA decision to pursue enforcement action.

If you have questions regarding this information request, please contact Janet Pellegrini at (312) 886-4298, or have your legal counsel contact Gary Prichard, Office Regional Counsel, at (312) 886-0570.

Sincerely,

Tinka G. Hyde
Director, Water Division

Enclosures

cc: P. Novak, OEPA
James R. Turner, Treasurer, American Energy Corporation
Jon Nagel, American Energy Corporation

ENCLOSURE 1
CLEAN WATER ACT (CWA) SECTION 308 INFORMATION REQUEST

I. Instructions

1. Please provide a signed written confirmation, via fax or email attachment (pdf), to Janet Pellegrini, National Pollutant Discharge Elimination System Programs Branch, within 48 hours of receipt of this Information Request, of your intention to comply with this request.
2. Identify the full legal name (s) of you or your company. Identify the state of incorporation, the principal place of business and provide the name and mailing address of the registered agent for each state in which the company does business. If there is a parent company, please list the name and address of the parent.
3. GARY there are other general items normally requested in a 308, so if you need to include any this is a placeholder
- 4.
5. AEC must submit all information required by this request to EPA within 10 days of receipt of this letter.
6. Identify the person(s) responding to each Information Request.
7. All documents created for the Information Request should be provided in electronic format.
8. Respond to all requests using the following formats, as appropriate: MS Word Document, MS Excel Spreadsheet, MS Access Database, Geographic Information System (GIS) data, Adobe Acrobat Reader PDF format, or pictures and images in JPEG format. Data may be submitted on CD-ROMs or other electronic formats acceptable to EPA.
9. For data that is requested and/or submitted in tables, the data shall be accumulated and organized into a clearly labeled and annotated MS Excel Spreadsheet. The spreadsheet should be formatted so that it can be printed on an 8.5" x 11" sheet of paper. The spreadsheet can be formatted to print on an 8.5" x 14" or 11" x 17" sheet of paper if doing so offers additional clarity.
10. All records and documents that you create and/or rely upon in responding to any part of this request must be maintained for a period of at least three years from the date of the sample, measurement, or report, unless this time period is extended at the request of EPA in writing. Records of monitoring information shall include: the date, exact place, and time of sampling or measurements; the dates analyses were performed, the individual(s) who performed the analyses, the analytical techniques or methods used, and the results of such analyses.
11. In answering each Information Request, identify all documents and persons consulted, examined, or referred to in the preparation of each response. If any protocols are used for sampling and/or analysis in addition to those identified in section III, below, provide true

and accurate copies of such documents.

12. For each document produced in response to this Information Request, indicate on the document, or in some other reasonable manner, the number of the Information Request and its subpart to which it responds.
13. If information not known or not available to you as of the date of submission of a response to this Information Request should later become known or available to you, you must supplement your response to EPA. Moreover, should you find at any time after the submission of its response that any portion of the submitted information is false or misleading, you must notify EPA thereof as soon as possible.
14. Your response to this Information Request must be accompanied by a certificate that is signed and dated by you or the person who is duly authorized by you to respond to the request. The certification must state that the response is complete and contains all information and documentation available to you pursuant to the request. Enclosure 2 provides a Statement of Certification for this purpose.
15. All information submitted pursuant to this Information Request must be submitted to:

U.S. Environmental Protection Agency – Region 5
 Attention: Janet Pellegrini
 NPDES Programs Branch, WN-16J
 77 West Jackson Boulevard
 Chicago, IL 60604
 pellegrini.janet@epa.gov
 312-886-4298 (phone)
 312-692-2436 (fax)

II. Definitions

All terms used in this Information Request that are not defined below shall be defined as they are defined in Section 502 of the CWA, 33 U.S.C. § 1362, and regulations at 40 C.F.R. § 122.2 and 40 C.F.R. Part 434. Unless otherwise indicated, the following definitions shall apply strictly for the purposes of this Information Request:

1. “American Energy Corporation Century Mine” shall include all mining and related operations associated with Century Mine and Bennoc Refuse Disposal Area, located in Belmont County, Ohio.
2. “Document” includes any writings, drawings, graphs, charts, photographs, phone records, field records, operation logs/notes/field rounds sheets, electronic mail, facsimile, Supervisory Control and Data Acquisition (SCADA) information, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. Documents must be produced as they are kept in the usual course of business.
3. “Mining operation” shall mean the following: any surface and/or underground mine, a coal processing and preparation plant, a coal transportation facility, and all associated operations.

4. “NPDES” or “NPDES Permit” shall mean National Pollutant Discharge Elimination System permit or any state permit issued pursuant to the NPDES program that Ohio is authorized to administer.
5. “Process water” means water (including storm water) that comes in contact with coal preparation plants and associated areas, and active and post mining areas (including abandoned mine areas).
6. “Point source” means any discernable, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, or container.
7. “SMCRA” or “SMCRA Permit” shall mean any permit issued by Federal or State entities pursuant to the Surface Mining Control and Reclamation Act and shall include all issued and proposed amendments to the SMCRA permit.
8. “State” means the State of Ohio.
9. “You” and “your” shall mean American Energy Corporation and/or any company, entity, or corporation that has directed work at a American Energy Corporation mining operation, and any parent, affiliate, subsidiary or related entity of American Energy Corporation.
10. “Coal refuse pile area” as defined in 40 C.F.R. § 434.11(p), means any coal refuse deposited on the earth and intended as permanent disposal or long-term storage (greater than 180 days) of such material, but does not include coal refuse deposited within the active mining area or coal refuse never removed from the active mining area.
11. “Coal preparation and coal preparation plant associated areas” as defined in 40 C.F.R. § 434.20, means discharges from coal preparation plants and coal preparation plant association areas, including discharges which are pumped, siphoned, or drained from the coal preparation plant water circuit and coal storage, refuse storage, and ancillary areas related to the cleaning or beneficiation of coal of any rank including, but not limited to, bituminous, lignite and anthracite. *See also* 40 C.F.R. § 434.11 (e), (f) and (g).
12. “Mine drainage areas” as defined in 40 C.F.R. § 434.11(h) means any drainage, and any water pumped or siphoned, from an active mining area or a post-mining area.
13. “Active mining area”, as defined in 40 C.F.R. 434.11(b), means the area, on and beneath land, used or disturbed in activity related to the extraction, removal, or recovery of coal from its natural deposits. This term excludes coal preparation plants, coal preparation plant associated areas and post-mining areas.
14. “Reclamation areas” as defined in 40 C.F.R. § 434.11(l), means the surface area of a coal mine which has been returned to required contour and on which revegetation (specifically, seeding or planting) work has commenced.

III. Information Request

1. Provide the following information for Century Mine and the Bennoc Refuse Disposal Area:
 - A. Provide the last 3 years of Ohio Department of Natural Resources (ODNR) Division of

Mines and Reclamation's Quarterly Monitoring Report Sheets for monitoring site locations that are in Piney Creek and tributaries of Piney Creek that are:

- i. Upstream of currently permitted OGM00142*BG Pond 001 & Pond 002 (OH0144576 proposed Pond 023 & 024 respectively) and downstream of other discharges
 - ii. Upstream of currently permitted Pond 001 & Pond 002 (OH0144576 proposed Pond 023 & 024 respectively) and downstream of Pond 008A, B and C discharges
 - iii. Downstream of currently permitted Pond 001 (proposed Pond 023) and upstream of other discharges
 - iv. Downstream of Pond 002 (proposed Pond 024) and upstream of other discharges
 - v. Downstream of Pond 001 and Pond 002 and upstream of other discharges
 - vi. Include monitoring reports for the Points designated on ODNr maps for AEC Century Mine, as D-2, D-9 and D-12
 - vii. Include monitoring reports for Pond 001 and Pond 002
- B. The ODNr Quarterly Monitoring Report Sheets in accordance with the Surface Mining Control and Reclamation Act (SMCRA) must include all of the information associated with each monitoring site:
- i. Monitoring site ID,
 - ii. surface elevation of monitoring site,
 - iii. stream or spring flows (cfs or gpm),
 - iv. date measured,
 - v. pH,
 - vi. total Acidity,
 - vii. total Alkalinity,
 - viii. total Iron,
 - ix. total manganese,
 - x. total suspended solids,
 - xi. total hardness,
 - xii. total sulfates, and
 - xiii. specific conductance.

- C. Provide a map that depicts the exact location for each of the monitoring points within the Quarterly Monitoring Reports (QMR) and ensure that this map identifies each sampling location using the same Monitoring Site ID number as provided in the QMRs.
- D. Provide a table for all the monitoring sites that includes columns for; the exact waterway location of the sampling point (i.e. Piney Creek, tributary to Piney Creek, etc.), latitude and longitude coordinates for each sampling location to a tenth of a second (most accurate level available).
- E. Include any existing analytical data, from the last 3 years, for Pond 001 and Pond 002

ENCLOSURE 2

STATEMENT OF CERTIFICATION

I certify that the information contained in or accompanying this submission is true, accurate, and complete.

As to the identified portion(s) of this submission for which I cannot personally verify its truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

By _____
(Signature)

(Title)

(Date)

ENCLOSURE 3

Confidential Business Information (CBI) Assertion and Substantiation Requirements

Assertion Requirements

You may assert a business confidentiality claim covering all or part of the information requested in the attached letter, as provided in 40 C.F.R. § 2.203(b). To make a confidentiality claim, submit the requested information and indicate that you are making a claim of confidentiality. Any document over which you make a claim of confidentiality should be marked by placing on or attaching to the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as “trade secret” or “proprietary” or “company confidential” and a date, if any, when the information should no longer be treated as confidential. Information covered by such a claim will be disclosed by the EPA only to the extent permitted and by means of the procedures set forth by Section 308 of the CWA, and 40 C.F.R. Part 2. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified. EPA will construe the failure to furnish a confidentiality claim with your response to the attached letter as a waiver of that claim, and the information may be made available to the public without further notice to you.

Please segregate personnel, medical and similar files from your responses and include that information on separate sheet(s) marked as “Personal Privacy Information,” given that disclosure of such information to the general public may constitute an invasion of privacy.

Substantiation Requirements

All confidentiality claims are subject to EPA verification and must be made in accordance with 40 C.F.R. § 2.208 which provides in part that you satisfactorily show that you have taken reasonable measures to protect the confidentiality of the information and that you intend to continue to do so; and that the information is not and has not been reasonably obtainable by legitimate means without your consent.

Pursuant to 40 C.F.R. Part 2, Subpart B, EPA may at any time send you a letter asking you to substantiate fully your CBI claim. You must provide EPA with a response within the number of days set forth in the EPA request letter. Failure to submit your comments within that time will be regarded as a waiver of your confidentiality claim or claims, and EPA may release the information. EPA will ask you to specify which portions of the information you consider confidential. **You must be specific by page, paragraph, and sentence when identifying the information subject to your claim.** Any information not specifically identified as subject to a confidentiality claim may be disclosed to the requestor without further notice to you. For each item or class of information that you identify as being subject to CBI, EPA will ask you to answer the following questions, giving as much detail as possible:

1. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.
2. Information submitted to EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question 1 above?

- A. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered confidential?
- B. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, or articles? Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?
- C. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.
- D. For each category of information claimed as confidential, explain with specificity why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?

Please note that effluent data provided under Section 308 of the CWA, 33 U.S.C. § 1318, is not entitled to confidential treatment under 40 C.F.R. Part 2. "Effluent data" means, with reference to any source of discharge of pollutant (as that term is defined in Section 502(6) of the CWA, 33 U.S.C. 1362(6)):

Information necessary to determine the identity, amount, frequency, concentration, temperature, or other characteristics (to the extent related to water quality) of any pollutant which has been discharged by the source (of of any pollutant resulting from any discharge from the source), or any combination of the foregoing;

Information necessary to determine the identity, amount, frequency, concentration, temperature, or other characteristics (to the extent related to water quality) of the pollutants which, under an applicable standard or limitation, the source was authorized to discharge (including, to the extent necessary for such purpose, a description of the manner or rate of operation of the source); and

A general description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).

40 C.F.R. § 2.302 (a)(2)(i)(A), (B) and (C).

ENCLOSURE 4